

§ 590.3

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lender or other institution otherwise included in this section.

(c) *Loans which are secured by first liens on real estate* means loans on the security of any instrument (whether a mortgage, deed of trust, or land contract) which makes the interest in real estate (whether in fee, or in a leasehold or subleasehold extending, or renewable, automatically or at the option of the holder or the lender, for a period of at least 5 years beyond the maturity of the loan) specific security for the payment of the obligation secured by the instrument: *Provided*, That the instrument is of such a nature that, in the event of default, the real estate described in the instrument could be subjected to the satisfaction of the obligation with the same priority as a first mortgage of a first deed of trust in the jurisdiction where the real estate is located.

(d) *Loans secured by first liens on stock in a residential cooperative housing corporation* means loans on the security of:

(1) A first security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(e) *Loans secured by first liens on residential manufactured homes* means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home which will have priority over any conflicting security interest.

(f) *Residential real property* means real estate improved or to be improved by a structure or structures designed primarily for dwelling, as opposed to commercial use.

(g) *Residential manufactured home* shall mean a manufactured home as defined in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6), which is or will be used as a residence.

(h) *State* means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Is-

lands, and the Virgin Islands, except as provided in section 501(a)(2)(B) of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161.

§ 590.3 Operation.

(a) The provisions of the constitution or law of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any Federally-related loan:

(1) Made after March 31, 1980; and

(2) Secured by a first lien on:

(i) Residential real property;

(ii) Stock in a residential cooperative housing corporation when the loan is used to finance the acquisition of such stock; or

(iii) A residential manufactured home: *Provided*, That the loan so secured contains the consumer safeguards required by § 590.4 of this part;

(b) The provisions of paragraph (a) of this section shall apply to loans made in any state on or before the date (after April 1, 1980 and prior to April 1, 1983) on which the state adopts a law or certifies that the voters of such state have voted in favor of any law, constitutional or otherwise, which states explicitly and by its terms that such state does not want the provisions of paragraph (a) of this section to apply with respect to loans made in such state, except that—

(1) The provisions of paragraph (a) of this section shall apply to any loan which is made after such date pursuant to a commitment therefore which was entered into during the period beginning on April 1, 1980, and ending on the date the state takes such action;

(2) The provisions of paragraph (a) of this section shall apply to any rollover of a loan which loan was made, or committed to be made, during the period beginning on April 1, 1980, and ending on the date the state takes such action, if the mortgage document or loan note provided that the interest rate to the original borrower could be changed through the use of such a rollover; and

(3) At any time after the date of adoption of these regulations, any state may adopt a provision of law placing limitations on discount points

or such other charges on any loan described in this part.

(c) Nothing in this section preempts limitations in state laws on prepayment charges, attorneys' fees, late charges or other provisions designed to protect borrowers.

[54 FR 49715, Nov. 30, 1989, as amended at 66 FR 65822, Dec. 21, 2001]

§ 590.4 Federally-related residential manufactured housing loans—consumer protection provisions.

(a) *Definitions.* As used in this section:

(1) *Prepayment.* A "prepayment" occurs upon—

(i) Refinancing or consolidation of the indebtedness;

(ii) Actual prepayment of the indebtedness by the debtor, whether voluntarily or following acceleration of the payment obligation by the creditor; or

(iii) The entry of a judgment for the indebtedness in favor of the creditor.

(2) *Actuarial method.* The term *actuarial method* means the method of allocating payments made on a debt between the outstanding balance of the obligation and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation.

(3) *Precomputed Finance Charge.* The term *precomputed finance charge* means interest or a time/price differential as computed by the add-on or discount method. Precomputed finance charges do not include loan fees, points, finder's fees, or similar charges.

(4) *Creditor.* The term *creditor* means any entity covered by this part, including those which regularly extend or arrange for the extension of credit and assignees that are creditors under section 501(a)(1)(C)(v) of the Depository Institutions Deregulation and Monetary Control Act of 1980.

(b) *General.* (1) The provisions of the constitution or the laws of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is secured by a first lien on a residential mobile

home if a creditor covered by this part complies with the consumer protection regulations of this section.

(2) *Relation to state law.* (i) In making loans or credit sales subject to this section, creditors shall comply with state and Federal law in accordance with the following:

(A) *State law regulating matters not covered by this section.* When state law regulating matters not covered by this section is otherwise applicable to a loan or credit sale subject to this section, creditors shall comply with such state law provisions.

(B) *State law regulating matters covered by this section.* Creditors need comply only with the provisions of this section, unless the Office determines that an otherwise applicable state law regulating matters covered by this section provides greater protection to consumers. Such determinations shall be published in the FEDERAL REGISTER and shall operate prospectively.

(ii) Any interested party may petition the Office for a determination that state law requirements are more protective of consumers than the provisions of this section. Petitions shall be sent to: Secretary to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and shall include:

(A) A copy of the state law to be considered;

(B) Copies of any relevant judicial, regulatory, or administrative interpretations of the state law; and

(C) An opinion or memorandum from the state Attorney General or other appropriate state official having primary enforcement responsibilities for the subject state law provision, indicating how the state law to be considered offers greater protection to consumers than the Office's regulation.

(c) *Refund of precomputed finance charge.* In the event the entire indebtedness is prepaid, the unearned portion of the precomputed finance charge shall be refunded to the debtor. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, except that the debtor shall not be entitled to a refund which, is less than